

APR 03 2010

Board of Vocational Nursing
and Psychiatric Technicians

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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2008-1456

REGENIA CERVANTES,
a.k.a. REGENIA LYNN RUSH
P.O. Box 3774
Poplar, California 93258
Psychiatric Technician License No. PT 31895

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

2. On or about October 28, 2003, the Board issued Psychiatric Technician License Number PT 31895 to Regenia Cervantes, also known as Regenia Lynn Rush ("Respondent"). Respondent's psychiatric technician license expired on December 31, 2008.

STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 4520 provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

1 4. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a
2 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
3 period within which the license may be renewed, restored, reissued or reinstated. Under Code
4 section 4545, the Board may renew an expired license at any time within four years after the
5 expiration.

6 5. Code section 4521 states, in pertinent part:

7 The board may suspend or revoke a license issued under this chapter [the
8 Psychiatric Technicians Law (Bus. & Prof Code section 4500, et seq.)] for any of the
following reasons:

9 (a) Unprofessional conduct, which includes but is not limited to any of
10 the following:

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12 (4) Obtain or possess in violation of law, or prescribe, or except as
13 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
14 himself or herself or furnish or administer to another, any controlled substance as
defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug as defined in Section 4022

15 (5) Use any controlled substance as defined in Division 10 (commencing
16 with Section 11000) of the Health and Safety Code, or any dangerous drug as defined
17 in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
injurious to himself or herself, any other person, or the public or to the extent that the
use impairs his or her ability to conduct with safety to the public the practice
authorized by his or her license.

18 (6) Be convicted of a criminal offense involving the falsification of
19 records concerning prescription, possession, or consumption of any of the substances
20 described in paragraphs (4) and (5), in which event the record of the conviction is
conclusive evidence of the conviction. The board may inquire into the circumstances
surrounding the commission of the crime in order to fix the degree of discipline.

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22 (f) Conviction of any offense substantially related to the qualifications,
23 functions, and duties of a psychiatric technician, in which event the record of the
24 conviction shall be conclusive evidence of the conviction. The board may inquire
into the circumstances surrounding the commission of the crime in order to fix the
degree of discipline.

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26 (n) The commission of any act involving dishonesty, when that action is
27 substantially related to the duties and functions of the licensee . . .

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1 6. Code section 4523 states:

2 A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere made to a charge substantially related to the qualifications, functions and
4 duties of a psychiatric technician is deemed to be a conviction within the meaning of
5 this article. The board may order the license suspended or revoked or may decline to
6 issue a license, when the time for appeal has lapsed, or the judgment or conviction
7 has been affirmed on appeal or when an order granting probation is made suspending
8 the imposition of sentence, irrespective of a subsequent order under the provisions of
9 Section 1203.4 of the Penal Code allowing the person to withdraw his plea of guilty
10 and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
11 the accusation, information, or indictment.

12 7. Code section 490, subdivision (a), states:

13 In addition to any other action that a board is permitted to take against a
14 licensee, a board may suspend or revoke a license on the ground that the licensee has
15 been convicted of a crime, if the crime is substantially related to the qualifications,
16 functions, or duties of the business or profession for which the license was issued.

17 8. Health and Safety Code section 11170 states that no person shall prescribe,
18 administer, or furnish a controlled substance for himself.

19 9. California Code of Regulations, title 16, section 2578, states, in pertinent part:

20 For the purposes of denial, suspension, or revocation of a license pursuant
21 to Division 1.5 (commencing with Section 475) of the Business and Professions
22 Code, a crime or act shall be considered to be substantially related to the
23 qualifications, functions or duties of a licensed psychiatric technician if to a
24 substantial degree it evidences present or potential unfitness of a licensed psychiatric
25 technician to perform the functions authorized by his license in a manner consistent
26 with the public health, safety, or welfare. Such crimes or acts shall include but not be
27 limited to those involving the following:

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 (f) Any crime or act involving the sale, gift, administration, or furnishing
 of narcotics or dangerous drugs or dangerous devices' as defined in Section 4022 of
 the Business and Professions Code.

29 **COST RECOVERY**

30 10. Code section 125.3 provides, in pertinent part, that a Board may request the
31 administrative law judge to direct a licentiate found to have committed a violation or violations of
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
33 enforcement of the case.

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1 **CONTROLLED SUBSTANCE AT ISSUE**

2 11. "Methamphetamine" is a Schedule II controlled substance as designated by Health
3 and Safety Code section 11055, subdivision (d)(2).

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Criminal Convictions)**

6 12. Respondent is subject to disciplinary action pursuant to Code sections 4521,
7 subdivision (f), and 490, subdivision (a), in that Respondent was convicted of crimes which are
8 substantially related to the qualifications, functions, and duties of a psychiatric technician, as
9 follows:

10 a. On or about October 21, 2008, in the criminal proceeding titled *People v. Regenia*
11 *Cervantes* (Super. Ct. Tulare County, 2008, Case No. PCM195339), Respondent pled guilty to
12 violating Health and Safety Code section 11550, subdivision (a) (under the influence of a
13 controlled substance, a misdemeanor). The circumstances of the crime are as follows: On or
14 about November 7, 2007, Respondent willfully and unlawfully used or was under the influence of
15 the controlled substance methamphetamine.

16 b. On or about December 18, 2008, in the criminal proceeding titled *People v. Regenia*
17 *Cervantes* (Super. Ct. Tulare County, 2008, Case No. VCF213205B), Respondent was convicted
18 by the court on her plea of nolo contendere of violating Penal Code section 211 (second degree
19 robbery, a felony). Respondent was also charged with violating Penal Code section 207,
20 subdivision (a) (kidnapping, a felony); however, that charge was dismissed in view of
21 Respondent's plea as above. On January 22, 2009, Respondent was sentenced to serve 365 days
22 in the Tulare County Jail and was placed on formal probation for three years. The circumstances
23 of the crime are as follows: On or about November 16, 2008, Respondent, along with two other
24 persons, Juanita Trujillo and Ricardo Diaz Rodriguez, unlawfully and by means of force and fear
25 took \$150 in cash from the victim, M. R.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Self-Administration of a Controlled Substance)**

3 13. Respondent is subject to disciplinary action pursuant to Code section 4521,
4 subdivision (a)(4), on the grounds of unprofessional conduct, in that on or about November 7,
5 2007, Respondent self-administered the controlled substance methamphetamine without lawful
6 authority therefor, as set forth in subparagraph 12 (a) above.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Use of Controlled Substances to an Extent or in a Manner
9 Dangerous or Injurious to Oneself or Others)**

10 14. Respondent is subject to disciplinary action pursuant to Code section 4521,
11 subdivision (a)(5), on the grounds of unprofessional conduct, in that on or about November 7,
12 2007, Respondent used the controlled substance methamphetamine to an extent or in a manner
13 dangerous or injurious to herself, others, and/or the public, as set forth in subparagraph 12 (a)
14 above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Conviction of a Crime Involving Use of Controlled Substances)**

17 15. Respondent is subject to disciplinary action pursuant to Code section 4521,
18 subdivision (a)(6), on the grounds of unprofessional conduct, in that on or about October 21,
19 2008, Respondent was convicted of a criminal offense involving the use of the controlled
20 substance methamphetamine, as set forth in subparagraph 12 (a) above.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Dishonest Act)**

23 16. Respondent is subject to disciplinary action pursuant to Code section 4521,
24 subdivision (n), in that on or about November 16, 2008, Respondent committed an act involving
25 dishonesty, as set forth in subparagraph 12 (b) above.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Bureau of Vocational Nursing and Psychiatric Technicians
4 issue a decision:

- 5 1. Revoking or suspending Psychiatric Technician License Number PT 31895, issued to
6 Regenia Cervantes, also known as Regenia Lynn Rush;
- 7 2. Ordering Regenia Cervantes, also known as Regenia Lynn Rush, to pay the Bureau of
8 Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and
9 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 10 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: April 6, 2010


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant